

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

ATLANTIC GRAPHICS, LTD.,
d/b/a SIR SPEEDY PRINTING,
Plaintiff

v.

PUBLIC SERVICE INSURANCE CO.
d/b/a MAGNA CARTA COMPANIES and
ALLAN INSURANCE AGENCY, INC.
Defendants

C.A. NO.: 1:14-cv-12115

**ANSWER OF DEFENDANT, PUBLIC SERVICE INSURANCE COMPANY¹ TO
PLAINTIFF'S AMENDED COMPLAINT AND JURY DEMAND**

Now comes the defendant, Public Service Insurance Company ("defendant") and answers the Amended Complaint as follows:

PARTIES

1) The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiff to prove the same.

2) The defendant admits that Public Service Insurance Company is authorized to do business in the Commonwealth of Massachusetts and domiciled in Illinois.

3) The defendant admits that Public Service Insurance Company has a branch in Braintree, MA.

¹ Defendant maintains that it has been incorrectly identified as "Public Service Insurance Company d/b/a Magna Carta Companies."

4) Because the allegations contained in this paragraph relate to another party, no response is required. To the extent that the allegations contained in this paragraph are intended to state a claim against Defendant, Public Service Insurance Company, they are denied.

FACTS

5) The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiff to prove the same.

6) The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiff to prove the same.

7) The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiff to prove the same.

8) The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiff to prove the same.

9) The defendant neither admits nor denies the allegations contained in this paragraph as the said allegations do not constitute a statement of fact, but rather a conclusion of law and as such do not require a response by defendant. Insofar as the said allegations may be interpreted as statements of fact, they are denied. The defendant further states that with regard to the referenced telephone conversation, the defendant

neither admits nor denies the allegations contained in this paragraph as defendant is without sufficient information or knowledge to form a belief as to the truth of said allegations and calls upon the plaintiff to prove the same.

10) The defendant neither admits nor denies the allegations contained in this paragraph as the said allegations do not constitute a statement of fact, but rather a conclusion of law and as such do not require a response by defendant. Insofar as the said allegations may be interpreted as statements of fact, they are denied. The defendant further states that with regard to the referenced telephone conversation, the defendant neither admits nor denies the allegations contained in this paragraph as defendant is without sufficient information or knowledge to form a belief as to the truth of said allegations and calls upon the plaintiff to prove the same.

11) The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph. The defendant further states that with regard to whether there is coverage under the insurance policy, said allegations do not constitute a statement of fact, but rather a conclusion of law and as such do not require a response by defendant. Insofar as the said allegations may be interpreted as statements of fact, they are denied.

12) The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph. The defendant further states that with regard to whether there is coverage under the insurance policy, said allegations do not constitute a statement of fact, but rather a conclusion of law and as such do not require a response by defendant. Insofar as the said allegations may be interpreted as statements of fact, they are denied.

13) The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph. The defendant further states that the insurance policy speaks for itself.

14) The defendant admits that an incident occurred in Boston on May 15, 2013, but denies the remaining allegations and calls on the plaintiff to prove the same.

15) The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls on the plaintiff to prove the same.

16) Denied.

17) Denied.

18) Denied.

19) The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph. Insofar as the said allegations may be interpreted as statements of fact or to in any manner state a claim of liability against the defendant, they are denied.

20) Because the allegations contained in this paragraph state a legal conclusion, no answer is required. To the extent that the allegations contained in this paragraph are intended in any manner to state a claim of liability against the defendant, they are denied. Defendant further states that the document(s) referred to therein speak(s) for itself/themselves and therefore the defendant neither admits nor denies the allegations contained therein.

21) The defendant neither admits nor denies the allegations contained in this paragraph as the said allegations do not constitute a statement of fact, but rather a

conclusion of law and as such do not require a response by defendant. Insofar as the said allegations may be interpreted as statements of fact, they are denied. The defendant further states that with regard to the referenced telephone conversation, the defendant neither admits nor denies the allegations contained in this paragraph as defendant is without sufficient information or knowledge to form a belief as to the truth of said allegations and calls upon the plaintiff to prove the same.

22) The defendant neither admits nor denies the allegations contained in this paragraph as the said allegations do not constitute a statement of fact, but rather a conclusion of law and as such do not require a response by defendant. Insofar as the said allegations may be interpreted as statements of fact, they are denied. The defendant further states that with regard to the referenced telephone conversation, the defendant neither admits nor denies the allegations contained in this paragraph as defendant is without sufficient information or knowledge to form a belief as to the truth of said allegations and calls upon the plaintiff to prove the same.

23) The defendant neither admits nor denies the allegations contained in this paragraph as the defendant is without sufficient information or knowledge to form a belief as to the truth of said allegations and calls upon the plaintiff to prove the same.

24) The defendant neither admits nor denies the allegations contained in this paragraph as the said allegations do not constitute a statement of fact, but rather a conclusion of law and as such do not require a response by defendant. Insofar as the said allegations may be interpreted as statements of fact, they are denied. The defendant further states that with regard to the referenced telephone conversation, the defendant neither admits nor denies the allegations contained in this paragraph as defendant is

without sufficient information or knowledge to form a belief as to the truth of said allegations and calls upon the plaintiff to prove the same.

25) Denied.

26) Denied.

27) Denied. The defendant further states the document(s) referred to therein speak(s) for itself/themselves and therefore the defendant neither admits nor denies the allegations contained therein.

28) The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiff to prove the same.

29) Denied.

30) Denied.

31) Denied.

32) Denied.

33) Denied.

34) Denied.

35) Denied.

36) The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiff to prove the same.

37) The defendant admits that it sent the attached letter but denies the remaining allegations contained in this paragraph and calls upon the plaintiff to prove the same.

38) Denied.

39) Denied.

40) Denied.

41) Denied. The defendant further states the document(s) referred to therein speak(s) for itself/themselves and therefore the defendant neither admits nor denies the allegations contained therein.

42) The defendant neither admits nor denies the allegations contained in this paragraph as the said allegations do not constitute a statement of fact, but rather a conclusion of law and as such do not require a response by defendant. Insofar as the said allegations may be interpreted as statements of fact or to in any manner state a claim of liability against the defendant, they are denied.

43) The defendant neither admits nor denies the allegations contained in this paragraph as defendant is without sufficient information or knowledge to form a belief as to the truth of said allegations and calls upon the plaintiff to prove the same. The defendant further states the document(s) referred to therein speak(s) for itself/themselves and therefore the defendant neither admits nor denies the allegations contained therein.

44) The defendant neither admits nor denies the allegations contained in this paragraph as the said allegations do not constitute a statement of fact, but rather a conclusion of law and as such do not require a response by defendant. Insofar as the said allegations may be interpreted as statements of fact or to in any manner state a claim of liability against the defendant, they are denied.

45) The defendant neither admits nor denies the allegations contained in this paragraph as the said allegations do not constitute a statement of fact, but rather a

conclusion of law and as such do not require a response by defendant. Insofar as the said allegations may be interpreted as statements of fact or to in any manner state a claim of liability against the defendant, they are denied.

46) The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiff to prove the same.

47) Denied.

48) Denied.

49) The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiff to prove the same.

50) Denied. The defendant further states the document(s) referred to therein speak(s) for itself/themselves and therefore the defendant neither admits nor denies the allegations contained therein.

51) Denied.

52) Denied.

53) The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiff to prove the same.

54) Denied.

55) Denied.

56) The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiff to prove the same.

57) The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiff to prove the same. The defendant further states that the allegations contained in this paragraph state a legal conclusion. To the extent that the allegations contained in this paragraph are intended in any manner to state a claim of liability against the defendant, they are denied.

58) Denied. The defendant further states that the allegations contained in this paragraph state a legal conclusion. To the extent that the allegations contained in this paragraph are intended in any manner to state a claim of liability against the defendant, they are denied.

59) Denied.

60) The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiff to prove the same. The defendant further states that the allegations contained in this paragraph state a legal conclusion. To the extent that the allegations contained in this paragraph are intended in any manner to state a claim of liability against the defendant, they are denied.

61) Denied.

62) Denied.

63) Denied.

64) Denied.

65) Denied.

66) Denied.

67) Denied.

68) Denied.

COUNT I
BREACH OF CONTRACT
(Against PSI)

69) The defendant repeats, re-alleges, and incorporates by reference its answers to the allegations contained in Paragraphs 1 through 68 above, as if expressly rewritten and set forth herein.

70) Because the allegations contained in this paragraph state a legal conclusion, no answer is required. To the extent that the allegations contained in this paragraph are intended in any manner to state a claim of liability against the defendant, they are denied.

71) Because the allegations contained in this paragraph state a legal conclusion, no answer is required. To the extent that the allegations contained in this paragraph are intended in any manner to state a claim of liability against the defendant, they are denied.

72) Because the allegations contained in this paragraph state a legal conclusion, no answer is required. To the extent that the allegations contained in this paragraph are intended in any manner to state a claim of liability against the defendant, they are denied.

73) Denied.

74) Denied.

75) Denied.

WHEREFORE, the defendant demands judgment on its behalf together with interest, costs, and attorneys' fees.

COUNT II
BREACH OF CONTRACT
(Against Allan Insurance)

76) The defendant repeats, re-alleges, and incorporates by reference its answers to the allegations contained in Paragraphs 1 through 75 above, as if expressly rewritten and set forth herein.

77) Because the allegations contained in this paragraph are not directed to the defendant, no response is required. Insofar as the allegations contained in this paragraph may be interpreted as applying to the defendant, they are denied.

78) Because the allegations contained in this paragraph are not directed to the defendant, no response is required. Insofar as the allegations contained in this paragraph may be interpreted as applying to the defendant, they are denied.

79) Because the allegations contained in this paragraph are not directed to the defendant, no response is required. Insofar as the allegations contained in this paragraph may be interpreted as applying to the defendant, they are denied.

80) Because the allegations contained in this paragraph are not directed to the defendant, no response is required. Insofar as the allegations contained in this paragraph may be interpreted as applying to the defendant, they are denied.

81) Because the allegations contained in this paragraph are not directed to the defendant, no response is required. Insofar as the allegations contained in this paragraph may be interpreted as applying to the defendant, they are denied.

WHEREFORE, the defendant demands judgment on its behalf together with interest, costs, and attorneys' fees.

COUNT III
BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING
(Against PSI and Allan Insurance)

82) The defendant repeats, re-alleges, and incorporates by reference its answers to the allegations contained in Paragraphs 1 through 81 above, as if expressly rewritten and set forth herein.

83) Denied.

84) Denied.

WHEREFORE, the defendant demands judgment on its behalf together with interest, costs, and attorneys' fees.

COUNT IV
VIOLATION OF M.G.L. CHAPTER 93A & 176D
(Against PSI)

85) The defendant repeats, re-alleges, and incorporates by reference its answers to the allegations contained in Paragraphs 1 through 84 above, as if expressly rewritten and set forth herein.

86) Because the allegations contained in this paragraph state a legal conclusion, no answer is required. To the extent that the allegations contained in this paragraph are intended in any manner to state a claim of liability against the defendant, they are denied.

87) Denied.

88) Denied.

89) Denied.

90) Denied.

91) Denied.

WHEREFORE, the defendant demands judgment on its behalf together with interest, costs, and attorneys' fees.

COUNT V
VIOLATION OF M.G.L. CHAPTER 93A
(Against Allan Insurance)

92) The defendant repeats, re-alleges, and incorporates by reference its answers to the allegations contained in Paragraphs 1 through 91 above, as if expressly rewritten and set forth herein.

93) Because the allegations contained in this paragraph are not directed to the defendant, no response is required. Insofar as the allegations contained in this paragraph may be interpreted as applying to the defendant, they are denied.

94) Because the allegations contained in this paragraph are not directed to the defendant, no response is required. Insofar as the allegations contained in this paragraph may be interpreted as applying to the defendant, they are denied.

95) Because the allegations contained in this paragraph are not directed to the defendant, no response is required. Insofar as the allegations contained in this paragraph may be interpreted as applying to the defendant, they are denied.

96) Because the allegations contained in this paragraph are not directed to the defendant, no response is required. Insofar as the allegations contained in this paragraph may be interpreted as applying to the defendant, they are denied.

97) Because the allegations contained in this paragraph are not directed to the defendant, no response is required. Insofar as the allegations contained in this paragraph may be interpreted as applying to the defendant, they are denied.

98) Because the allegations contained in this paragraph are not directed to the defendant, no response is required. Insofar as the allegations contained in this paragraph may be interpreted as applying to the defendant, they are denied.

99) Because the allegations contained in this paragraph are not directed to the defendant, no response is required. Insofar as the allegations contained in this paragraph may be interpreted as applying to the defendant, they are denied.

WHEREFORE, the defendant demands judgment on its behalf together with interest, costs, and attorneys' fees.

COUNT VI
MISREPRESENTATION
(Against Allan Insurance)

100) The defendant repeats, re-alleges, and incorporates by reference its answers to the allegations contained in Paragraphs 1 through 99 above, as if expressly rewritten and set forth herein.

101) Because the allegations contained in this paragraph are not directed to the defendant, no response is required. Insofar as the allegations contained in this paragraph may be interpreted as applying to the defendant, they are denied.

102) Because the allegations contained in this paragraph are not directed to the defendant, no response is required. Insofar as the allegations contained in this paragraph may be interpreted as applying to the defendant, they are denied.

103) Because the allegations contained in this paragraph are not directed to the defendant, no response is required. Insofar as the allegations contained in this paragraph may be interpreted as applying to the defendant, they are denied.

104) Because the allegations contained in this paragraph are not directed to the defendant, no response is required. Insofar as the allegations contained in this paragraph may be interpreted as applying to the defendant, they are denied.

105) Because the allegations contained in this paragraph are not directed to the defendant, no response is required. Insofar as the allegations contained in this paragraph may be interpreted as applying to the defendant, they are denied.

WHEREFORE, the defendant demands judgment on its behalf together with interest, costs, and attorneys' fees.

COUNT VII
PROMISSORY ESTOPPEL
(Against Allan Insurance)

106) The defendant repeats, re-alleges, and incorporates by reference its answers to the allegations contained in Paragraphs 1 through 91 above, as if expressly rewritten and set forth herein.

107) Because the allegations contained in this paragraph are not directed to the defendant, no response is required. Insofar as the allegations contained in this paragraph may be interpreted as applying to the defendant, they are denied.

108) Because the allegations contained in this paragraph are not directed to the defendant, no response is required. Insofar as the allegations contained in this paragraph may be interpreted as applying to the defendant, they are denied.

109) Because the allegations contained in this paragraph are not directed to the defendant, no response is required. Insofar as the allegations contained in this paragraph may be interpreted as applying to the defendant, they are denied.

110) Because the allegations contained in this paragraph are not directed to the defendant, no response is required. Insofar as the allegations contained in this paragraph may be interpreted as applying to the defendant, they are denied.

WHEREFORE, the defendant demands judgment on its behalf together with interest, costs, and attorneys' fees.

COUNT VIII
NEGLIGENCE
(Against Allan Insurance)

111) The defendant repeats, re-alleges, and incorporates by reference its answers to the allegations contained in Paragraphs 1 through 91 above, as if expressly rewritten and set forth herein.

112) Because the allegations contained in this paragraph are not directed to the defendant, no response is required. Insofar as the allegations contained in this paragraph may be interpreted as applying to the defendant, they are denied.

113) Because the allegations contained in this paragraph are not directed to the defendant, no response is required. Insofar as the allegations contained in this paragraph may be interpreted as applying to the defendant, they are denied.

114) Because the allegations contained in this paragraph are not directed to the defendant, no response is required. Insofar as the allegations contained in this paragraph may be interpreted as applying to the defendant, they are denied.

WHEREFORE, the defendant demands judgment on its behalf together with interest, costs, and attorneys' fees.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The acts complained of were committed by a person(s) for whose conduct the defendant is not legally responsible.

SECOND AFFIRMATIVE DEFENSE

If the plaintiff proves that the defendant was negligent as alleged, which the defendant denies, the plaintiff was negligent to a greater degree than the defendant and is barred from recovery under the comparative negligence law of the Commonwealth of Massachusetts.

THIRD AFFIRMATIVE DEFENSE

Should it be found that the defendant was negligent and such negligence exceeded that of the plaintiff, then the damages assessable against the defendant must be reduced by the percentage of negligence attributable to the plaintiff in accordance with Mass. General Laws ch. 231, § 85.

FOURTH AFFIRMATIVE DEFENSE

The plaintiff's Complaint should be dismissed pursuant to Rule 12(b)(6) for failure to state a claim upon which relief can be granted.

FIFTH AFFIRMATIVE DEFENSE

The plaintiff has failed to give notice as required by law and is therefore barred from recovery.

SIXTH AFFIRMATIVE DEFENSE

If the plaintiff was injured or damaged as alleged, the plaintiff assumed the risk of such injuries or damage and that conduct was a cause of the plaintiff's injury and/or damages, and therefore the plaintiff is barred from recovery.

SEVENTH AFFIRMATIVE DEFENSE

This action is barred by the applicable statute of limitations and/or statute of repose.

EIGHTH AFFIRMATIVE DEFENSE

The plaintiff is not entitled to recovery because of its failure to mitigate its alleged damages.

NINTH AFFIRMATIVE DEFENSE

The Complaint should be dismissed pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure for lack of personal jurisdiction.

TENTH AFFIRMATIVE DEFENSE

The Complaint should be dismissed pursuant to Rule 12(b)(3) of the Federal Rules of Civil Procedure for improper venue.

ELEVENTH AFFIRMATIVE DEFENSE

The Complaint should be dismissed pursuant to Rule 12(b)(4) of the Federal Rules of Civil Procedure for insufficiency of process.

TWELFTH AFFIRMATIVE DEFENSE

The Complaint should be dismissed pursuant to Rule 12(B)(5) of the Federal Rules of Civil Procedure for insufficiency of service of process.

THIRTEENTH AFFIRMATIVE DEFENSE

To the extent the defendant had any obligations to the plaintiff, such obligations have been fully, completely, and properly performed.

FOURTEENTH AFFIRMATIVE DEFENSE

The plaintiff's claims are barred under the equitable doctrine of laches and/or unclean hands.

FIFTEENTH AFFIRMATIVE DEFENSE

The Complaint should be dismissed because of misnomer of the defendant, its true name being Public Service Mutual Insurance Company.

SIXTEENTH AFFIRMATIVE DEFENSE

The plaintiff failed to comply with the terms and conditions of the policy(ies) of insurance issued by defendant, wherefore the plaintiff is barred from recovery in this action.

SEVENTEENTH AFFIRMATIVE DEFENSE

The plaintiff is not entitled to coverage under the alleged insurance policy(ies) for said loss under the terms and conditions of the said policy(ies) of insurance.

EIGHTEENTH AFFIRMATIVE DEFENSE

The defendant states that the damages claimed in the plaintiff's complaint are not covered under the terms and conditions of the policy issued by defendant.

NINETEENTH AFFIRMATIVE DEFENSE

Any obligation that the defendant may have to indemnify the plaintiffs is limited or eliminated by the terms and conditions of the policy issued by the defendant, including but not limited to any and all applicable exclusions and/or limitations contained in said policy.

TWENTIETH AFFIRMATIVE DEFENSE

Any duty of defendant to provide coverage to the plaintiff is subject to all applicable deductibles, retentions, retrospective premiums, and limits of liability under the policy(ies) issued by defendant.

TWENTY-FIRST AFFIRMATIVE DEFENSE

To the extent that defendant had any obligations to the plaintiff, such obligations have been performed fully, completely, reasonably, properly and in good faith in every respect.

TWENTY-SECOND AFFIRMATIVE DEFENSE

The complaint should be dismissed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief can be granted, insofar as the plaintiff claims relief pursuant to M.G.L. Chapter 93A.

TWENTY-THIRD AFFIRMATIVE DEFENSE

The dispute between the plaintiffs and defendants constitutes a good faith dispute on the part of the defendants regarding the interpretation and application of insurance coverage, and the actions of the defendants have been based upon a plausible, good faith understanding of any obligations owed by them, and therefore they have not committed an unfair or deceptive act or practice within the meaning of G.L. c. 93A.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

Any assessment of interest against the plaintiff/defendant-in-counterclaim is barred as being confiscatory and violative of the United States and Massachusetts Constitutions.

Plaintiff/defendant-in-counterclaim will serve notice of this defense on the Attorney General of the Commonwealth of Massachusetts as provided under G.L. c. 231A, § 8.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

Any assessment of punitive damages against the plaintiff/defendant-in-counterclaim is barred as being confiscatory and violative of the United States and Massachusetts Constitutions. The plaintiff/defendant-in-counterclaim will service notice of this defense on the Attorney General of the Commonwealth as provided under G.L. c. 231A, § 8.

THE DEFENDANT RESERVES THE RIGHT TO ASSERT ADDITIONAL AFFIRMATIVE DEFENSES UPON COMPLETION OF DISCOVERY.

DEMAND FOR JURY TRIAL

THE DEFENDANT DEMANDS A TRIAL BY JURY ON ALL CLAIMS AND ISSUES.

Respectfully submitted,
The defendant,

Public Service Mutual Insurance Company

By their attorney,

/s/ John A. Donovan III
John A. Donovan, III
BBO# 631110
SLOANE and WALSH, LLP
Three Center Plaza
Boston, MA 02108
(617) 523-6010

CERTIFICATE OF SERVICE

I, John A. Donovan III certify that on this 31st day of July 2014, I sent a true copy of the within documents by electronic means (ECF) and first class mail, postage prepaid, to:

James L. Rudolph, Esquire
Kara Moheban McLoy, Esquire
RUDOLPH FRIEDMANN, LLP
92 State Street
Boston, MA 02109

/s/ John A. Donovan III
John A. Donovan III